

EFFECTIVE
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NEBRASKA HEALTH AND HUMAN SERVICES
REGULATION AND LICENSURE

173 NAC 6

TITLE 173 CONTROL OF COMMUNICABLE DISEASE

CHAPTER 6 DIRECTED HEALTH MEASURES TO PREVENT OR LIMIT THE SPREAD
OF COMMUNICABLE DISEASE, ILLNESS, OR POISONING

6-001 SCOPE AND AUTHORITY: These regulations are enacted pursuant to Neb. Rev. Stat. §§ 71-502, and 81-601 et seq. and apply to the exercise of authority by the Department to order Directed Health Measures necessary to prevent, limit, or slow the spread of communicable disease, illness, or poisoning.

Nothing in these regulations precludes the Department from requesting voluntary compliance with beneficial health measures.

6-002 DEFINITIONS

Chief Medical Officer means the state Chief Medical Officer appointed pursuant to Neb. Rev. Stat. § 81-3201, if the Department Director is not a medical doctor.

Communicable disease, illness, or poisoning means an illness due to an infectious or malignant agent, which is capable of being transmitted directly or indirectly to a person from an infected person or animal through the agency of an intermediate animal, host, or vector, or through the inanimate environment.

Decontamination means the removal or neutralizing of contaminating material, such as radioactive materials, biological materials, or chemical agents, from a person or object to the extent necessary to preclude the occurrence of foreseeable adverse health effects. Decontamination includes remediation or destruction of sources of communicable disease or biological, chemical, radiological, or nuclear agents.

Department means the Department of Health and Human Services Regulation and Licensure or its successor.

Directed Health Measure means any measure, whether prophylactic or remedial, intended and directed to prevent or limit the spread of communicable disease or to prevent or limit public exposure to or spread of biological, chemical, radiological, or nuclear agents.

Director means the Director of Regulation and Licensure, or a person acting on behalf of the Director as his or her designee.

Health care facility means any facility licensed under the Health Care Facility Licensure Act, and such additional clinics or facilities not licensed under that act as may be identified in specific orders issued pursuant to 173 NAC 6.

Health care provider means any credentialed person regulated under the Advanced Practice Registered Nurse Act, the Emergency Medical Services Act, the Licensed Practical Nurse-Certified Act, the Nebraska Certified Nurse Midwifery Practice Act, the Nurse Practice Act, the Occupational Therapy Practice Act, the Uniform Licensing Law, or Neb. Rev. Stat. §§ 71-3702 to 71-3715.

Isolation means the separation of people who have a specific communicable disease, illness, or poisoning from healthy people and the restriction of their movement to stop the spread of that disease, illness, or poison. In circumstances where animals are agents of spread of communicable disease, illness, or poisoning, isolation may apply to such animals.

Local public health department means a local public health department as defined by Neb. Rev. Stat. § 71-1626 and its governing officials.

Municipality means any City of the Metropolitan class (see Neb. Rev. Stat. § 14-101), Primary class (§ 15-101), First class (§ 16-101), Second class (§ 17-101), and Village (§ 17-201) and its governing officials.

Personal protective equipment (PPE) means equipment ordered or used to protect an individual from communicable disease, illness, or poisoning.

Premises means land and any structures upon it.

Public health authority means any individual or entity charged by law with a duty or authority to enforce or carry out a public health function.

Quarantine directed to identified individuals or defined populations means the restriction of, or conditions upon, the movement and activities of people who are not yet ill, but who have been or may have been exposed to an agent of communicable disease, illness, or poisoning and are therefore potentially capable of communicating a disease, illness, or poison. The purpose is to prevent or limit the spread of communicable disease, illness, or poison. Quarantine of individuals or defined populations generally involves the separation of the quarantined from the general population. In circumstances where animals are agents of spread of communicable disease, illness, or poisoning, quarantine may apply to such animals.

Quarantine officer means the statutorily established quarantine officer for a municipality or county, usually the chief executive or top law enforcement officer.

Quarantine of premises means restriction of the movement of all people and animals upon, into, or out from those premises to prevent or limit the spread of communicable disease or illness or to prevent or limit public exposure to or spread of biological, chemical, radiological, or nuclear agents.

6-003 FINDINGS

6-003.01 Director Informed: When the Director receives information that a member or members of the public have been, or may have been exposed to a communicable disease, illness, or poisoning by biological, chemical, radiological, or nuclear agents, the Director will review all information under the following provisions to determine if any Directed Health Measure should be ordered.

This information may come from:

1. The United States Department of Health and Human Services Centers for Disease Control and Prevention;
2. A Local Public Health Department;
3. Communicable disease surveillance conducted by the Department;
4. Treating health care providers or health care facilities; or
5. Other public health, security, or law enforcement authorities.

6-003.02 Director's Findings: Before ordering a Directed Health Measure, the Director:

1. Must find both:
 - a. That a member or members of the public have been, or may have been exposed; and
 - b. That Directed Health Measures exist to effectively prevent, limit, or slow the spread of communicable disease or illness or to prevent, limit, or slow public exposure to or spread of biological, chemical, radiological, or nuclear agents; and
2. Must find one or more of the following:
 - a. That the exposure presents a risk of death or serious long-term disabilities to any person;
 - b. That the exposure is wide-spread and poses a significant risk of harm to people in the general population; or
 - c. That there is a particular subset of the population that is more vulnerable to the threat and thus at increased risk; and
3. May make further finding, in assessing the nature of the risk presented:
 - a. Whether the threat is from a novel or previously eradicated infectious agent or toxin;
 - b. Whether the threat is or may be a result of intentional attack, accidental release, or natural disaster; or
 - c. Whether any person(s) or agent(s) posing the risk of communicating the disease are non-compliant with any measures ordered by a health care provider.

6-003.03 Affirmative Findings: If affirmative findings are made pursuant to 173 NAC 6-003.02 and the Director further finds that a delay in the imposition of an effective Directed

Health Measure would significantly jeopardize the ability to prevent or limit the transmission of a communicable disease, illness, or poisoning or pose unacceptable risks to any person or persons, the Director may impose any of the Directed Health Measures set out in 173 NAC 6-004.

6-004 DIRECTED HEALTH MEASURES

6-004.01 Directed Health Measures which may be ordered by the Director are:

6-004.01A Quarantine of:

1. Individuals;
2. Defined populations;
3. Buildings and premises, or of defined areas, public and private, or
4. Animals.

The methods of quarantine may require the individual or population to remain within or outside of defined areas (*cordon sanitaire*) or restricted to or from specified activities, which may include “work quarantine” restricting individuals or defined populations to their residence or workplace.

In the event that the quarantine of affected premises posing an immediate threat to the public health and safety is determined to be incapable of effective enforcement, the Department may act alone or in concert with any local jurisdiction having condemnation or nuisance abatement authority, to carry out measures effective to remove the threat, including safe demolition of the premises.

6-004.01B Isolation of individuals:

1. At home;
2. In a health care facility; or
3. In another designated area.

6-004.01C Decontamination.

6-004.01D Such other protocols or measures as may be identified as effective against public health threats by the American Public Health Association and the United States Department of Health and Human Services Centers for Disease Control and Prevention or other similar public health authority.

6-004.02 Any of the Directed Health Measures may include, and are not limited to, any of the following:

1. Periodic monitoring and reporting of vital signs;
2. Use of PPE for the performance of specified tasks or at specified premises; or
3. Specific infection control measures including cleaning and disposal of specified materials.

6-004.03 Any Order of the Director may include temporary seizure or commandeering of personal or real property for public health purposes.

6-004.04 Directed Health Measures may be directed to an individual, group of individuals, or a population, or directed to the public at large with regard to identified premises or activities and may also include health care providers, health care facilities, health care authorities, and public and private property including animals.

6-005 PROCEDURES

6-005.01 In making the finding under 173 NAC 6-003 and determining the measures under 173 NAC 6-004, the Director will consult with the Chief Medical Officer, if the Director is not a medical doctor, or other medical and communicable disease control personnel of the Department. The Director may make use of the expertise and observations of any health care provider who has treated a person for whom a Directed Health Measure is being considered. The Director will also consider the directives and guidelines issued by the American Public Health Association and the United States Department of Health and Human Services Centers for Disease Control and Prevention or their successors, and may consider the directives and guidelines issued by similar public health authorities.

6-005.02 In determining the nature, scope, and duration of the Directed Health Measure ordered, the Director, based on the information available at the time of the determination, will:

1. Assess the situation and identify the least restrictive practical means of isolating, quarantining, or decontaminating an individual that effectively protects unexposed and susceptible individuals;
2. Select a place of isolation or quarantine that will allow the most freedom of movement and communication with family members and other contacts without allowing disease transmission to others and allow the appropriate level of medical care needed by isolated or quarantined individuals to the extent practicable;
3. For communicable diseases, order that the duration of the Directed Health Measure should be no longer than necessary to ensure that the affected individual or group no longer poses a public health threat;
4. Give consideration to separation of isolated individuals from quarantined individuals. However, if quarantine or isolation is possible in the home(s) of the affected individual(s), individuals may be isolated with quarantined individuals; and
5. Give consideration to providing for termination of the Order under the following circumstances:

- a. If laboratory testing or examination is available to rule out a communicable condition, the Order may provide that proof of the negative result will be accepted to terminate a Directed Health Measure; or
- b. If treatment is available to remedy a communicable condition, the Order may provide that proof of successful treatment will be accepted to terminate a Directed Health Measure.

6-006 ISSUANCE OF ORDERS

6-006.01 Upon a finding pursuant to 173 NAC 6-003 and determination pursuant to 173 NAC 6-004, the Director will issue an Order directed to the affected individual, individuals, entity, or entities.

6-006.02 Orders of the Director imposing Directed Health Measures are effective immediately.

6-006.03 Orders will contain the finding and determination and will order the affected person or persons to comply with the terms of the Order, and will also include the following:

6-006.03A Orders of Isolation will contain the following:

1. Name and identifying information of the individual(s) subject to the order;
2. Brief statement of the facts warranting the isolation;
3. Conditions for termination of the order;
4. Duration of isolation period;
5. The place of isolation;
6. Prohibition of contact with others except as approved by the Director or designee;
7. Required conditions to be met for treatment;
8. Required conditions to be met for visitation if allowed;
9. Instructions on the disinfecting or disposal of any personal property of the individual;
10. Required precautions to prevent the spread of the subject disease;
11. The individual's right to an independent medical exam at their own expense;
12. Provisions to ensure and monitor compliance; and
13. Procedure to request a hearing.

6-006.03B Orders of Quarantine will contain the following:

1. Name, identifying information or other description of the individual, group of individuals, premises, or geographic location subject to the order;
2. Brief statement of the facts warranting the quarantine;

3. Conditions for termination of the order;
4. Specified duration of the quarantine;
5. The place or area of quarantine;
6. Prohibition of contact with others except as approved by the Director or designee;
7. Symptoms of the subject disease and a course of treatment;
8. Instructions on the disinfecting or disposal of any personal property;
9. Precautions to prevent the spread of the subject disease;
10. The individual's right to an independent medical exam at their own expense,
11. Provisions to ensure and monitor compliance; and
12. Procedure to request a hearing.

6-006.03C Orders of Decontamination will contain the following:

1. Description of the individual, group of individuals, premises, or geographic location subject to the order;
2. Brief statement of the facts warranting the decontamination;
3. Instructions on the disinfecting or disposal of any personal property;
4. Precautions to prevent the spread of the subject disease; and
5. Procedure to request a hearing.

6-007 NOTICE OF ORDERS

6-007.01 Orders to Individuals: Orders directed to individuals will be delivered in a manner reasonably calculated to give the individual actual notice of the terms of the Order consistent with the threat of communicable disease, illness, or poisoning. Personal delivery may be attempted, except in cases when personal delivery would present a risk of spread of disease or exposure to agents that cannot be avoided by measures reasonably available. Electronic transmission by e-mail or telefacsimile will be sufficient, provided that any available means of determining and recording receipt of such notice will be made. If electronic transmission is impossible or unavailable under the circumstances, oral communication by telephone or direct transmission of voice will be sufficient, and such communication will be memorialized at the time it is delivered.

6-007.02 Orders to Groups: Orders directed to groups of individuals or populations may be disseminated by mass media.

6-007.03 Quarantine Orders Regarding Areas: Orders directing the quarantine of premises or geographic locations may be disseminated by mass media and will be posted at or near the premises or geographic location in order to be visible and effective to achieve the intended purpose. Copies of the Orders will be delivered to the owners or others in control of the premises, if known, in the same manner as Orders directed to individuals.

6-007.04 Notice to Elected Officials: Copies of all Orders will be provided if reasonably possible to the chief elected official(s) of the jurisdiction(s) in which the Order is implemented.

6-008 HEARING PROCESS

6-008.01 Request for Hearing: Any person subject to an Order under 173 NAC 6 may request a contested case hearing to contest the validity of the Order, in accord with the Department's rules of practice and procedure adopted pursuant to the Administrative Procedure Act.

6-008.02 Scheduling of Hearing: Upon request, the Department will schedule a hearing to be held as soon as reasonably possible under the circumstances. Unless the person subject to an Order requests otherwise, the hearing will be scheduled no sooner than three days after the request is received by the Department. The hearing will be conducted in accord with the Department's rules of practice and procedure adopted pursuant to the Administrative Procedure Act.

6-008.03 Parties to the Hearing: The parties to the hearing will be limited to the Department and the subject person unless:

1. One or more additional persons have requested contested case hearings on substantially identical issues;
2. The interests of administrative economy require that the matters be consolidated; and
3. No party would be prejudiced by consolidation.

The parties may be represented by counsel at their own expense.

6-008.04 Notice and Conduct of Hearing: Reasonable prior notice of the time and place for hearing will be given to the parties. The hearing may be conducted in whole or in part by telephone or videoconference.

6-008.05 Purpose and Decision: The purpose of the hearing is to determine if the factual bases for the Order exist and the reasonableness of the ordered measures. The Director may affirm, reverse or modify the Order by a written Findings of Fact, Conclusions of Law and Order to be issued as soon as reasonably possible after the hearing.

6-008.06 Appeal of Hearing Decision: An appeal to the District Court may be taken from the decision of the Director in accord with the Administrative Procedure Act.

6-009 ENFORCEMENT OF ORDERS

6-009.01 The Department may seek the assistance of the appropriate quarantine officer to enforce any Order.

6-009.02 Department personnel assigned to the enforcement of any Order will promote the need for the Directed Health Measure and encourage individuals to comply with all aspects of the Order.

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6-009.03 Any individual subject to an Order may at any time present evidence to the Director to show that the Order should be modified or terminated. The Director may or may not modify or terminate the Order in his or her sole discretion.

6-009.04 In the event of noncompliance with the terms of a Department Order under 173 NAC 6-006, law enforcement and other Municipal and Local Public Health Department personnel will be required to aid the Department in enforcement of the Order, pursuant to 173 NAC 6 and Neb. Rev. Stat. § 71-502.

6-010 COOPERATION AND COORDINATION

6-010.01 The Department may assist or seek the assistance of quarantine officers, Local Public Health Departments, other public health authorities, and others authorized or required by law to carry out Directed Health Measures in carrying out those measures.

6-010.02 Treating Health Care Providers must follow and aid affected individuals and populations in compliance with ordered Directed Health Measures.

6-011 REPORTING OF NONCOMPLIANCE

Treating Health Care Providers, Health Care Facilities, and other persons must report any information known to them concerning any individual or entity subject to an Order of quarantine, isolation, decontamination, or other Directed Health Measure that is not in compliance with the Order. The report must be made to the Department and local law enforcement.